

Floor Statement: Introduction of Disapproval Resolution

January 21, 2010

*****As Prepared for Delivery*****

“Mr. President, over the past five months I’ve repeatedly expressed concern about the Environmental Protection Agency’s decision to issue back-door climate regulations under the Clean Air Act. I spoke at length about this issue here on the Senate floor in September, and then again in December. I’ve also discussed it with dozens of groups, from all across the political spectrum, and found there is remarkably widespread agreement with my views.

“As the EPA moves closer and closer to issuing these regulations, I continue to believe that this command-and-control approach is our worst option for reducing the emissions blamed for climate change. I also believe that with so much at stake, Congress must be given time to develop an appropriate and more responsible solution. And so today, after consultation with the Parliamentarian, I have come to the floor to introduce a resolution of disapproval under the Congressional Review Act that would prevent the EPA from acting on its own. Senator Lincoln of Arkansas, Senator Nelson of Nebraska, and Senator Landrieu of Louisiana have joined me as cosponsors of this bipartisan resolution, as have 35 of my Republican colleagues.

“I’ve also come to the floor to re-affirm and re-emphasize my previous remarks on this issue. Given what has been alleged about my intentions, I believe this debate needs to be directed back to its substance, and away from the ad hominem attacks and red herrings that have been thrown out in recent weeks. There is a legitimate and substantive debate to be had over whether the EPA should be allowed to issue command-and-control climate regulations, and I welcome that debate. If there are any Senators who support the unprecedented, regulatory intrusion that the EPA is pursuing, then I hope those members will come to the floor and explain why. I strongly oppose that approach, however, and I hope my colleagues will listen to my explanation as to why I feel as strongly about this issue as I do.

“Our bipartisan resolution deals with an incredibly important question: whether or not members of this body are comfortable with the actions EPA will take under its current interpretation of the Clean Air Act. I’m not comfortable with those actions, and neither are the Senators who have already agreed to add their names to this effort. The Clean Air Act was written by Congress to regulate criteria pollutants, not greenhouse gases, and its implementation remains subject to oversight and guidance from elected representatives. We should continue our work to pass meaningful energy and climate legislation, but in the meantime, we cannot turn a blind eye to the EPA’s efforts to impose back-door climate regulations with no input from Congress.

“The decision to offer this resolution was brought about by what will happen in the wake of the EPA’s decision to issue the endangerment finding. You see, it is not merely a “finding.” It’s actually a floodgate, and under the guise of protecting the environment, it’s set to unleash a wave of damaging new regulations that will wash over and further submerge our struggling economy.

“Make no mistake: if Congress allows this to happen, there will be severe consequences. Businesses will be forced to cut jobs, if not move outside our borders or close their doors for

good. Domestic energy production will be severely restricted, increasing our dependence on foreign suppliers and threatening our national security. Housing will become less affordable, and consumer goods more expensive, as the impacts of the EPA's regulations are felt in towns and cities and on farms all across America.

"My home state is a perfect example of why we must proceed with utmost caution. If these regulations are allowed, the consequences for Alaska would be devastating. Hundreds of facilities will be subject to much greater regulation, including large hotels, hospitals, fish processors, and mines. Energy-intensive businesses throughout the state will be forced to acquire, install, and operate new equipment and technologies. In many cases, that will prove impossible because the technologies are too expensive or simply do not exist.

"Because the EPA's proposed regulations are such a blunt tool, they will hit my home state's energy sector particularly hard. The continued operation of existing businesses and future endeavors alike – including Alaska's three refineries, the Trans-Alaska Pipeline System, or TAPS, and the proposed Alaska Natural Gas Pipeline – will all be jeopardized.

"Take for example the Flint Hills refinery, located just south of Fairbanks. This refinery purchases royalty oil out of the pipeline at premium rates, which is critically important to the continued operation of TAPS itself. That 800-mile long pipeline has been challenged by decreasing throughput, as lower volumes take longer than ever to arrive from the North Slope. Oil is also arriving at Flint Hills at a lower temperature than it used to, which requires more energy to heat and crack the crude oil into the marketable fuels that Alaskans depend on.

"The Flint Hills refinery already struggles to keep its jet fuel output at competitive rates in order to maintain Anchorage's status as a major center for global air cargo. It also faces a relatively inelastic market in Alaska for its other fuel products. The EPA will likely be unable, and in any event unwilling, to address these issues under its command-and-control climate regulations.

"The construction and operation of an Alaska Natural Gas Pipeline would also be significantly hobbled by the EPA. The main reason for this relates to compressor stations, which maintain a pipeline's pressure and enable movement of the gas. There is no known best available control technology, as required under the Clean Air Act, for reducing carbon dioxide emissions from compressors and no good options for compliance.

"I can't overstate how important these facilities and projects are to Alaska and America. Our refineries help ensure the state's status as a transportation hub and a strategic base for military operations. TAPS delivers hundreds of thousands of barrels of oil to Americans each day and most of the revenue for Alaska's state budget. The proposed natural gas pipeline is a pillar of our future economy that will bring Americans billions of cubic feet of clean-burning natural gas. And collectively, these projects mean well-paying jobs for thousands of hard-working Alaskans.

"While the EPA's endangerment finding may be described as an effort to protect the environment, it would actually damage the very foundations of my home state's economy. And Alaska isn't the only state that will face dire economic consequences. I know that some members may not be particularly concerned about what happens in my state, but I hope they will

consider the ripple effect of this decision – and the heavy economic burden it will place on those throughout the Lower 48.

“This was foreshadowed in New Mexico in September; in Kentucky, in December; and in Arkansas just last week. The EPA has ordered regulators in each of those states to go back to the drawing board on plans to build new power plants. These decisions were all the result of this EPA’s interpretation of the Clean Air Act, and represent a fundamental departure from the permitting process Congress envisioned for this statute.

“The implications are clear. The people who live in those states are already feeling the effects. Construction is being delayed. Jobs are not being created or, more importantly, filled. Commerce is suffering, and depending on what becomes of these proposed plants, local residents may have to brace for a spike in energy prices, as well.

“Seen in this light, the EPA’s regulations will not only add a thick new layer of federal bureaucracy, but also serve to depress economic activity – to slow it down, to make it more expensive, to render it less efficient. If you thought the recession made for good environmental policy, I expect you’ll love what the EPA has in store. Obtaining federal air permits is already an exercise in administrative agony that can take years and cost millions of dollars – and that’s before the existing system is overwhelmed by millions of new applicants.

“Instead of accepting that the Clean Air Act is not appropriate for this task, the EPA has proposed to lift its regulatory thresholds to 25,000 tons per year for greenhouse gases. That represents a clear departure from the statute’s explicit requirements, and has opened the agency to litigation – costly, time-consuming, and endlessly frustrating litigation. Lawsuits are already being prepared against the EPA’s so-called “tailoring” proposal. When the final rule is issued, it will be challenged. I expect the courts will then reject it, as it has no legal basis, and restore the regulatory thresholds to 100 tons and 250 tons per year. Before long, the agency will find itself mired in the regulatory nightmare it has sought to avoid.

“Again, it’s hard not to find this both surreal and deeply disturbing. The national unemployment rate has spiked to 10 percent. Yet, here in Washington federal bureaucrats are contemplating regulations that will destroy jobs, while millions of Americans are doing everything they can just to find one. Moreover, given the amount of time it has taken the Senate to consider health care, and the list of other bills waiting to be considered, it appears that there will not be enough time for Congress to debate energy and climate legislation before the EPA takes action. That means that the people of our states have no voice in this process. They will be subject to rules and regulations that affect their lives and livelihoods without ever having the opportunity to express their concerns through their representatives in Congress.

“Perhaps the most important question that needs to be answered is this: why would the EPA want to pursue these regulations right now, when we should be focused on getting our economy back on track? Environmental advocates, senior Democrats, the Administrator of the EPA, and even the President have repeatedly said they prefer congressional legislation. With such widespread and high-level agreement, you’d think it would be easy to suspend the agency’s efforts.

“Unfortunately, that’s not been the case, because many of those same individuals are convinced that the threat of EPA regulations is somehow useful and necessary. It’s no secret that this is the centerpiece of a highly coercive strategy – it’s the administration attempting to force Congress to pass a climate bill more quickly than it otherwise would. For my part, I would simply point out that the strategy has failed so far. And it will continue to fail in the months ahead, because members of Congress will not enact bad legislation in order to stave off bad regulations.

“What the administration’s strategy has done, however, is put Congress in a difficult position. It’s apparent to almost all of us that more time is needed to develop a good climate policy that can draw support from a bipartisan majority of the Senate. We are working on it – I have my staff actively developing a wide range of approaches for reducing emissions. Senator Cantwell and Senator Collins recently introduced a new approach, and Senators Graham, Kerry, and Lieberman are hard at work on their ‘tripartisan’ proposal. But as the EPA proceeds with its greenhouse gas regulations, Congress remains far from completing its work, and we’re left with no choice but to shift at least part of our focus to halting the EPA’s efforts. As I’ve stated before, my goals here are twofold: to ensure that Congress has sufficient time to work on climate legislation, and to ensure that the worst of our options – a massive expansion of the Clean Air Act – does not occur before that task is finished.

“Now, in addition to the Senators who have signed on as co-sponsors of our bipartisan resolution, a variety of stakeholders have expressed strong support for slowing or stopping the EPA from issuing its greenhouse gas regulations. Many of these comments have focused on the tailoring proposal, while others oppose the endangerment finding. Some at the outer edges of the environmental community obviously disagree, but I think much of the rest of America – including state officials, businesses, farmers, and taxpayer advocates – all share our belief that the Clean Air Act should not be used to regulate emissions.

“Let me provide you with a few examples.

“The Governor of Alaska, Sean Parnell, has written that “The fundamental question posed by the proposed rule is whether greenhouse gases can be effectively regulated under the Clean Air Act. We think not. Attempting to force fit the Clean Air Act to the purpose of regulating greenhouse gases will be ineffective and will negatively impact Alaska ... The proposed rule would bury Alaska’s businesses, institutions, and the State’s environmental agencies in regulatory burden.”

“The Governor of Mississippi, Haley Barbour, has written that “Regulating greenhouse gas emissions under the Clean Air Act will undoubtedly increase the cost of energy, increase the cost of doing business, increase the cost of consumer products, and jeopardize millions of jobs by putting U.S. manufacturers at a disadvantage against foreign competitors.”

“The Governor of West Virginia, Joe Manchin, commented that “At a time when our state is fighting to save jobs and stabilize the economy, we cannot afford to act carelessly. EPA has taken a risky and unprecedented step in promulgating this rule. The regulation of GHG emissions is a matter that should be left to Congress, and EPA would be wise to seek Congressional action instead of attempting to regulate GHG under the CAA.”

“Even the California Energy Commission, based in the state with the strictest environmental standards, felt compelled to weigh in because, “EPA’s proposed PSD tailoring threshold jeopardizes California’s renewable energy strategy.” Instead of speeding the transition to cleaner energy, California is worried that the EPA’s proposals will actually slow their progress.

“Dozens of state governors and attorneys general have submitted comments opposing at least one of the EPA’s regulations. But comments from elected officials are not the half of it.

“The National Taxpayers Union has issued a press release that says, in part, “At a time when taxpayers are feeling the biggest squeeze since the Great Depression, it’s unconscionable that Congress is responding with regulatory and legislative proposals that will only make matters worse.”

“In a letter delivered to me yesterday, the American Farm Bureau Federation wrote that its delegates have unanimously adopted a resolution that “strongly supports any legislative action that would suspend EPA’s authority to regulate greenhouse gases under the Clean Air Act.” The letter goes on to assert that “How carbon emissions should be regulated is a matter to be decided by elected officials; that debate is now ongoing on Capitol Hill. It is there that these policy questions should be answered.”

“Finally, the Small Business Administration’s Office of Advocacy has concluded that the EPA’s greenhouse gas rules will likely have a “significant economic impact upon a substantial number of small entities... Small businesses, small communities, and small non-profit associations will be affected either immediately or in the near-term.”

“As public awareness of our bipartisan disapproval resolution grows in the days ahead, I expect many more statements will be issued in support of its passage. And while there is an extremely vocal minority that does not support it, I hope that my Senate colleagues will look at the broad coalition that does – and join us to oppose the EPA’s regulations.

“Before I wrap up, Mr. President, I’d also like to address the criticisms and arguments that have been made by those who oppose my efforts. I’d like to address four of the latest claims in hopes of putting them to rest once and for all.

“First, I would like to reiterate that our bipartisan disapproval resolution deals with the EPA’s current interpretation of the Clean Air Act, and has nothing to do with the science of global climate change. I would also remind my critics that I co-sponsored a cap-and-trade bill in the last Congress, and last year worked with the members of the Senate Energy Committee to craft a bipartisan clean energy bill. That bill has now been languishing on the Senate calendar for nearly eight months, just waiting to be called up and considered. I really think that’s a shame, because it would lead to significant emissions reductions and greater energy security for our country.

“Next, I’d like to address a rather creative claim – that I am somehow attempting to “gut” the Clean Air Act or subvert it into a “Dirty Air Act.” I have to admit, this one actually made me laugh because it’s just so wildly inaccurate. Neither my previous amendment nor this resolution

would have any effect on pollution standards and controls – neither would change a single word of the current statute. My resolution will simply prevent the massive, unwarranted expansion of this statute by halting the EPA’s efforts to use it to regulate greenhouse gas emissions – a purpose for which it was never intended, and a role that it simply cannot fulfill without serious and detrimental consequences.

“It has also been stated that this resolution will somehow prevent Congress from working constructively on climate legislation this year. Not the case. My resolution will restrain the EPA’s ability to issue greenhouse gas regulations, but it will have absolutely no bearing on Congress’ ability to debate climate policy. It’s especially ironic that those comments were made by the Senator who has complete control of the Senate calendar – if climate legislation doesn’t come up this year, it’s abundantly clear who will have made that decision.

“The last claim I’d like to address are the allegations about who helped draft my September amendment, which was never offered and is no longer on the table. Not only are the allegations categorically false, they highlight the unwillingness of opponents of this measure to engage in the real policy discussion we should be having. The question that so many of the individuals and groups opposed to my efforts have failed entirely to answer, is if they honestly think that EPA climate regulations under the Clean Air Act would be good or bad for America.

“I hope the debate over this resolution will stay rooted in substance. There is a legitimate and substantive debate to be had about whether the EPA should be allowed to issue these regulations before Congress has had an opportunity to fully debate the issue of climate change. In my mind, the answer is “no.” Congress must be given the time it needs to develop a responsible policy that protects both the environment and our economy. We’re not incapable or even unwilling to legislate on this topic. So far, this Congress has merely failed to develop a balanced measure that draws enough support to be signed into law. We can remedy that shortcoming, and I remain committed to playing a constructive role in the effort.

“I believe the looming specter of EPA regulations is actually a big part of the reason why we have had difficulty moving forward on climate legislation. Even though we know that some approaches for reducing emissions are greatly inferior to others, there’s inexplicable resistance to removing even our worst options from consideration. I haven’t heard one member say that he or she prefers regulation over legislation. And yet, that option is not only still around, but also closer than ever to becoming reality. As long as it remains out there, it will be Plan B for those who wish to address climate change at any cost. And if this issue has become so politicized that some members would support EPA regulation instead of a legislative effort aimed at passing a bipartisan bill, that would not only be a tragedy for our constituents, but also a sad day for the Senate.

“If we are serious about fulfilling our duty to our constituents and giving this issue the full debate it deserves, we should take EPA regulations off the table. Without a backstop that says, “emissions will be reduced, one way or another, no matter how painful,” supporters of climate legislation would have to get serious about finding common ground and bipartisan cosponsors.

“Major environmental legislation such as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act all faced opposition at the outset – that’s no secret or surprise. But members worked together to resolve concerns, instead of threatening to take a different and more damaging course. As Senator Ed Muskie would later write, the Clean Air Act “was passed unanimously after just two days on the floor,” which prompted Senator Eugene McCarthy to remark that he’d “finally found an issue better than motherhood – and some people are even against motherhood.” The Clean Water Act passed by a vote of 86 to zero, and the Safe Drinking Water Act did not even require a roll call – it was passed by voice vote.

“Mr. President, the Senate has a history of coming together to overwhelmingly support common-sense environmental legislation. Today, however, as we seek the best way to reduce greenhouse gas emissions, we’re being presented with a false choice between unacceptable legislation and unacceptable regulations. We’re being told, threatened really, to “pass a bill now or the economy will suffer.” A number of Senators are trying to develop bills that can be signed into law, but even as that work continues, the EPA’s endangerment finding has opened the door to further damage. I believe Congress must take that option off the table, and we can do that by approving the bipartisan disapproval resolution that 39 Senators have now introduced. Allowing the EPA to proceed will endanger jobs, and our economy, and our global competitiveness. That should be an outcome we can all agree to avoid.

“If you truly believe that EPA climate regulations are good for the country, then vote to oppose our resolution. But if you share our concerns, and believe that climate policy should be debated in Congress, then vote with us to support it.

“Thank you, Mr. President, I yield the floor.”